

REMARKS

Claims 9, 10 and 26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Accordingly, Applicant has amended claim 9 to merely clarify the claimed subject matter. The Examiner's statement referencing claim 10, that the separating wall is located at the back of the oven is not consistent with the oven as claimed in claims 9 and 10, which like the illustrated embodiment references a separating wall that is not at the back or rear. Claim 26 has been amended to depend from claim 25. Applicant respectfully requests this rejection be withdrawn.

Claims 4, 11, 16, 20 and 25 have been rewritten in independent form and therefore should be allowable per the indications in the action. Dependent claims 5-7, 12-13, 17-18, 21-22 and 26 should likewise be allowable. Applicant notes that amended claim 20 replaces the term "rack" found in original claim 20 with the term "product," as the term product had antecedent basis in the original claim and the term rack did not.

Claim Rejections – 35 U.S.C. § 103

Claims 1-3, 8-10, 14, 15, 19, 23, 24, 27 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's acknowledged prior art in view of Vasan (U.S. Pat. 5,816,234). Applicant has amended independent claims 1 and 19 to more clearly recite that the heated air entering the rack receiving section from the heat exchanger section is directed along an internally facing surface of the wall so as to attach to and flow along the internally facing surface of the wall from one side of the rack receiving section toward an opposite side of the rack receiving section before returning back to the heat exchanger section.

As acknowledged by the Examiner, the prior art cited by the Applicant is completely silent regarding directing air flow along a side wall of the oven. While the Examiner argues that Vasan discloses vertical slot means directing air flow along an oven side wall, Vasan fails to describe at least the limitations of directing the air flowing along the flow path from the heat exchanger section into the rack receiving section along the wall, as claimed, and directing the

heated air along the wall before returning back to the heat exchanging section, as claimed. Instead, referring to Fig. 3, Vasan describes drawing heated air into an oven cavity 34 through horizontally-spaced apertures 48 formed in an inner wall 42 that separates an air passage 46 from the oven cavity. After the heated air is forced into the oven cavity 34 through the apertures 48, the heated air is drawn into an air circulation mechanism 54 and then forced over the inner surface of the inner wall 42 to draw more heated air into the oven cavity. Notably, the air forced by circulation mechanism 54 over wall 42 is not air that has come from the heating element cavity 32. Air is then directed out a vent 43 in the top 41 of the oven cavity 34. (See col. 3, lines 34-52.) Thus, Vasan does not direct the air flowing along the flow path from the heat exchanger section entering the rack receiving section along the wall, nor does Vasan direct the heated air along the wall before returning back to the heat exchanging section, as the limitations are claimed. The Examiner also asserts that it would have been obvious to adapt the convection means of Vasan to the prior art oven since Vasan teaches such to enhance heating uniformity. Applicant respectfully disagrees.

Even assuming it is proper to combine the art cited by the Applicant and Vasan, a point not conceded by Applicant, as noted above the combination would not describe or suggest claims 1 or 19. Nor would the skilled artisan be motivated to make this modification. Vasan does not even suggest that his convection means can be used in oven systems such as Applicant's, and even appears to suggest the contrary. As stated by Vasan at col. 3, ln. 23-25, "the openings 38, passages 46 and apertures 48 define the *only* pathway for heated air to travel between the heating element cavity 32 and oven cavity 34." As can be seen clearly by Fig. 3 of Vasan, the air is shown flowing in only one direction from the heating cavity 32 to the oven cavity 34. By contrast, Applicant discovered that the Coanda effect can be utilized in an oven to prevent significant amounts of heated air from short circuiting from the inlet passage into the rack receiving section to the outlet to the heat exchanger section. As noted by the Applicant, this can "assure that a suitable portion of the heated air from the heat exchanger section 12 reaches the far side 42 of the rack receiving section 14, and the far side of the rack 26, to provide a more even baking of food products 24 on the rack 26." (Pg. 6, para. 18.) Thus, one of ordinary skill in the art would have no motivation to modify the prior art cited by the Applicant with the teachings of

the convection oven disclosed by Vasan. Vasan teaches directing air over a wall in order to induce flow through multiple openings 38 in the wall. Such teachings do not address the problem of avoiding the short circuiting of air flow.

Obviousness can only be established by combining or modifying the teaching of the prior art where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. (See M.P.E.P. § 2143.01.) Motivation cannot come from the invention itself. *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products Inc.*, 21 F.3d 1068, 1072 (Fed. Cir. 1993).

The Examiner has not provided sufficient evidence of motivation to combine or modify the references to arrive at the Applicant's claimed invention. Accordingly, Applicant requests this obviousness rejection be withdrawn.

Because independent method claim 23 has also been amended in a fashion similar to that described above, Applicant requests the rejection of this claim be withdrawn.

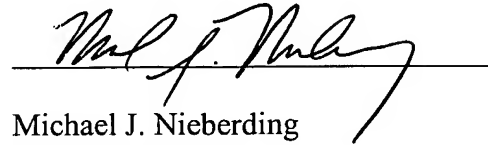
Regarding dependent claims 2, 3, 8-10, 14, 15, 19, 23 and 24, Applicant requests reconsideration in light of the above remarks and amendments.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Response
Serial No. 10/665,947
Docket: 006593-2020 (ITW 30532)

Based upon the foregoing, issuance of a Notice of Allowance is requested. Please contact the undersigned attorney with any questions regarding this response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Nieberding", is written over a horizontal line.

Michael J. Nieberding
Reg. No. 39,316

THOMPSON HINE LLP
2000 Courthouse Plaza NE
10 West Second Street
Dayton, Ohio 45402-1758
Telephone (937) 443-6892
Facsimile: (937) 443-6635

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